

## **REMARKS**

### **Status of the Claims**

Claims 11-45 and 49-59 are pending in the above-identified application. Claims 12, 14, 16, 18, and 43-45 are allowed. Claims 11-45 and 49-59 are indicated to contain allowable subject matter. Claims 24, 51, and 54 are amended. Support for the amendments is found throughout the specification. Accordingly, the amendments do not introduce new matter into this application.

### **Status of the Specification**

The written description is amended to indicate that U.S. Patent Application Serial No. 09/639,836 has issued as U.S. Patent No. 6,667,274. No new subject matter was introduced.

### **Claim Objection**

Claim 54 was objected to because of a phrasing informality. Applicants assert that this objection is obviated in view of the amendment to Claim 54 and respectfully request that this objection be withdrawn.

### **Rejections Based on Obviousness-Type Double Patenting**

Claims 11, 13, 15, 17, 19-30, and 49-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-2, 4-5, 7, and 20 of U.S. Patent No. 6,107,230 to McDaniel et al. ("*McDaniel*") in view of U.S. Patent No. 4,767,735 to Ewen et al. ("*Ewen*"). Respectfully, this rejection is traversed.

The PTO states that *McDaniel* discloses all limitations except the use of the olefin, and *Ewen* discloses the use of an olefin in the catalyst preparation. Based on the combined references, the PTO states that it would have been obvious to use an olefin in the catalyst of the affected claims. Applicants respectfully disagree.

*McDaniel* is directed to a process to produce a composition of matter comprising contacting at least one organometal compound, at least one treated solid oxide compound, and at least one organoaluminum compound. See *McDaniel*, Claims 1 and 2. *McDaniel* is silent on a catalyst precursor comprising at least one treated solid oxide compound and at least one alpha olefin.

*Ewen* describes a Ziegler-type catalyst system, for example, consisting of a titanium chloride on a magnesium chloride support, a triethylaluminum cocatalyst, and diphenyl dimethoxy silane (DPMS). This mixture of the catalyst system is then prepolymerized with propylene prior to feeding into the polypropylene reactor. See column 3, line 13, to column 4, line 26. *Ewen* is silent with respect to catalyst systems which comprise treated solid oxides, organometals, organoaluminums, and alpha olefin compounds. Further, metallocene catalyst systems are not Ziegler-type catalyst systems.

“In holding an invention obvious in view of a combination of references, there must be some suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to select the references and combine them in the way that would produce the claimed invention.” *Karsten Mfg. Corp. v. Cleveland Gulf Co.*, 242 F.3d 1376, 1385, 58 U.S.P.Q.2d 1286, 1293 (Fed. Cir. 2001). *McDaniel* employs a metallocene-type catalyst system and *Ewen* employs a Ziegler-type catalyst system. These references are directed to **entirely different catalyst systems**, and there is no motivation for one of ordinary skill in the art to pick and choose various features from each reference, absent the Applicants’ pending application. There is no teaching nor suggestion in either reference to employ any aspect of either reference with the other.

In fact, when describing the invention, *Ewen* discloses that “...those skilled in the art will recognize that the following description is also applicable to other **Ziegler-type catalyst systems**.” (Emphasis added). See column 4, lines 1-4. Applicants note that *Ewen* **does not suggest** the applicability of the *Ewen* invention to **metallocene-type catalyst** systems of *McDaniel* or the claimed invention. In order to establish a *prima facie* case of obviousness, the PTO must show that “...some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine

the relevant teachings of the references.” *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

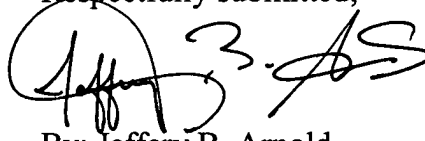
Respectfully, Applicants assert that a *prima facie* case of obviousness has not been made. Accordingly, Applicants request that the rejection of Claims 11, 13, 15, 17, 19-30, and 49-53 under the judicially created doctrine of obviousness-type double patenting, over *McDaniel* in view of *Ewen*, be withdrawn.

### **CONCLUSION**

In view of the above amendments and remarks, Applicants respectfully assert that the objections and rejections as set forth in the Office Action have been fully addressed and overcome. Hence, Applicants assert that all Claims are in condition for allowance and request that an early notice of allowance be issued. If issues may be resolved by Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 879-2433 is respectfully requested.

No fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required, or credit any overpayment to Deposit Order Account No. 09-0528.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffery B. Arnold", with a large, stylized "3" and "AS" written to the right of the signature.

By: Jeffery B. Arnold  
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